REPORTABLE.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS PATENT APPEAL NO. 65 OF 2007**

% **Date of Decision** : 17th April, 2007.

AMAR NATH .... Appellant.
Through Mr. R.K.Saini, Advocate.

VERSUS

D.D.A. .... Respondent.
Through Ms. Sangeeta Chandra, Advocate.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J :

1. The appellant, Mr. Amar Nath is aggrieved by the impugned Judgment dated 20th November, 2006 passed by the learned

Single Judge dismissing his Writ Petition No.23135/2005 with liberty to the appellant to pay the amount demanded by the respondent-Delhi Development Authority (hereinafter referred to as DDA, for short) within two weeks with 10% interest on the unpaid amount.

2. The office file of Delhi Development Authority makes an interesting reading. The appellant is a registrant under the Scheme called “Registration Scheme of New Pattern”, 1979 for allotment of MIG Flat. The appellant deposited Rs.4500/- with the respondent in 1979. In September, 1998 after nearly twenty years, a flat in Phase-II, Dwarka was allotted to him. No communication was sent by the respondent to the appellant for nearly eleven months. The letter of allotment was posted in August,1999. This allotment was under the hire-purchase scheme which did not require lump sum payment but payment in installments. The file shows that this letter of allotment was required to be sent to 266A, Bagh Kare Khan, Kishan Ganj New Delhi-110007 i.e. the address mentioned by the appellant

on the application form. However, this address was scored off and the letter was sent to F-65, Kamla Nagar, Delhi-7. The said address was written by hand. There is no paper on record to show that the appellant had furnished any information for change of address. This letter came back undelivered. Accordingly, as per office noting dated 10th October, 2000, the respondent-Delhi Development Authority cancelled the allotment.

3. In the public hearing held on 7th July, 2004, the appellant protested against the cancellation. He pointed out that the letter was sent to a wrong address and not at the address given by him. It appears that the respondent was initially confused whether or not the appellant had asked for change of address. Change in address was recorded in the registration register maintained by the respondent. This was disputed by Mr. Amar Nath- the appellant. He stated that he had never changed his address and had been living at the same address i.e. house No. 266A, Bagh Kare Khan, Kishan Ganj, New Delhi since

1979. He also filed documents in support. Commissioner (Housing) in one of his office noting had recorded that it was not clear on what basis the address was changed and why in the registration register change in the address was made without any document.

4. After detailed examination, on 26th April, 2005, Commissioner (Housing) accepted the contention of the appellant that he had never informed about change of address and he had been residing at the address given in the registration application for the last 40 years. He also recorded that there was no request for change of address available in the file. The registration register was checked and it was found that someone had wrongly noted the new address by mistake. Reason for change of address was not mentioned in the register. Thereafter, the next noting on the file dated 27th April, 2005 has been recorded as under:-

> "Why cannot it be covered under the wrong address policy as the entire fault of sending D.L. at wrong address is of Delhi

Development Authority."

5. This noting was thereafter approved and it was directed that the appellant's name be included in the next draw of flats.

6. The respondent has a "wrong address policy", when due to fault of the respondent, an allotment letter is sent at a wrong address. In such cases the registrant is charged the original cost plus interest from the date of original allotment till the date of fresh allotment or the present cost of the flat, whichever is less.

7. In the draw of lots held on 29th June, 2005 the appellant was successful and he was allotted Flat No. 741, Second Floor, Sector 17, Pocket A, Dwarka.

8. Allotment letter was issued to the appellant on 31st October, 2005 specifying that the appellant was liable to pay cost of Rs.11,20,880/- towards cost of the flat. This amount was calculated on the basis of original cost of the flat plus interest on the basis of wrong address policy. The allotment letter was

sent after more than four months from the date of draw of lots on 29th June, 2005. Prior to 1st October, 2005 the original cost of the flat was Rs.8,43,920/- and thereafter the cost was increased to Rs.12,40,000/-.

9. The current cost of the flat before 1st October, 2005 was Rs.8,43,920/-. This was much lower than the original cost and interest that worked out to Rs.11,14,470/- with interest upto 31st September, 2005 and Rs.11,20,880/- with interest upto 30th Oct.,2005. Therefore, the appellant was entitled to allotment of flat for Rs. 8,43,920/- if the allotment was made before 31st September, 2005 and thereafter at Rs.11,20,880/-. It is also the case of both parties that the date of issue of allotment letter is the date of allotment and the date of issue of allotment letter determines the price payable by the appellant.

10. It may be relevant here to refer to the judgment of the Supreme Court in ***Delhi Development Authority versus Pushpendra Kumar Jain,*** 1994 Supp (3) SCC 494 **,** wherein it was observed;

"6. A perusal of the High Courts order shows that it is based upon the following two reasons:

(1) Though the draw was held on 12-10-1990, the allotment-cum-demand letter was issued to the respondent only on January 9/13, 1991. This delay was the result of inefficiency of the DDA.

(2) Inasmuch as the issue of allotment-cum-demand letter was delayed in the office of DDA, it cannot charge the revised land rates to the respondent inasmuch as the respondent became entitled to get the flat on 12-10-1990; the revision of land rates subsequent to the draw of lots cannot affect the respondent.

7. In our opinion, both the grounds assigned by the High Court are unsustainable. There was no material placed before the High Court nor has any material been brought to our notice to record a finding that the interval of three months between the draw of lots and the despatch of allotment-cum-demand letter was on account of inefficiency of the appellant. The appellant's case is that the draw of lots was held for nearly three thousand flats and since the land rates were revised meanwhile, the process of calculating the cost of each flat and sending of demand-cum-allotment letters to nearly three thousand allottees took some time. In our opinion, the interval of three months cannot be characterised either as inordinate or as

> deliberate delay. The scheme itself does not prescribe the period within which allotment has to be communicated from the date of draw of lots. It has, of course, to be done within a reasonable period."

11.This decision was considered in ***Kanpur Development Authority versus Sheela Devi,*** (2003) 12 SCC 497 **,** and it was held

> "18 **.** The case of *Prashant Kumar Shahi* aforementioned, is also of no help to the appellant. It supports the case of the respondents. This Court held that if the Authority is found to be responsible for the delay in delivery of the possession of the plots in terms of the agreement arrived at or according to the assurance given in the brochure, the allottee cannot be burdened with the interest on the balance amount not paid by him. But on the facts of that case, fault was found with the allottee in regard to the delay in payment. As already recorded above, in these appeals, with which we are concerned, delay was on account of the appellant Authority itself."

12.Some judgments of the Delhi High Court may also be noticed.

In Writ Petition (Civil) No. 23547/2005 titled Mr. Rajeev Kapoor versus Delhi Development Authority, it was noticed that draw of

lots was held on 15th October, 2004 but till the date of passing of the Order i.e. 4th January, 2006, demand-cum-allotment letter had not been issued. In these circumstances, the Court felt that three months time was reasonable time within which DDA should have issued necessary demand-cum-allotment letter. Similarly, in the case of Jagdish Khanna versus DDA, Writ Petition (Civil) No. 397/2006, the petitioner therein was allotted a flat in the year 1999 but the letter was sent to a wrong address. In another draw of lots in 2004 a new flat was allotted. However issue of allotment letter was delayed as DDA had doubts and decided to carry out fresh verification about the address of the petitioner therein. The file moved from one officer to the other. Ld. Single Judge came to the conclusion that there was no justification to direct further enquiry. It was accordingly directed that demand-cum-allotment letter should have been issued within reasonable period from the draw of lots. Three months in the said case was taken as the reasonable period for calculating the current cost. In Writ Petition (Civil) No.

23419/2005 titled Smt. Krishna Mehta versus DDA, the learned Single Judge relying upon the earlier decisions has held that Courts had broadly taken three months as reasonable time for issuance of demand-cum-allotment letter after the draw of lots.

13. It cannot be said that the Courts had fixed three months period as outer or lower limit for issue of demand-cum-allotment letter after draw of lots. The Courts merely regarded the said period as "sufficient" or “reasonable period” for calculating the dues payable and issue of demand cum allotment letter. The said period is indicative and is not fixed by the Courts as mandatory period for computing the current cost or the original cost and interest. Three months has been treated as a reasonable or normal period within which demand-cum-allotment letter should be issued. This cannot be regarded as cut-of date, outer limit or even lower limit for fixing the price. This period is not sacrosanct. What is reasonable time in a given case depends upon several factors and can vary from case to case. The period of three months cannot be

regarded as an inflexible period legislated by the Courts, nor can it be held that even if there is justification for the delay, the lower price should be charged. However, cause and reason for the delay are within the knowledge of the respondent -DDA and therefore if there is delay, the onus to show that the delay is reasonable must be discharged by the respondent by justifying the abnormal time taken.

14. In this regard we may refer to the averments made in the Writ Petition which was filed by the appellant. In paragraph 9 of the Writ Petition it was stated that due to inefficient working, callous and indifferent attitude towards registrants/allottees, the appellant had been made to cough out a higher amount. Some of the judgments mentioned above, were cited by the appellant in support of his contention. In the counter affidavit filed by DDA, there is no justification and reason given for the time taken to issue demand-cum-allotment letter on 31st October, 2005 when the draw of lots was held on 29th June, 2005.

15. However, to satisfy ourselves and to verify the reasons for the

delay in issue of the demand-cum-allotment letter, we have examined the original file produced before us.

16. After the draw of lots on 29th June, 2005, the first noting in the file is dated 6th July, 2005 which records that the appellant was successful in the draw of lots. Thereafter, on 12th July, 2005 costing details was required to be computed. Strangely, without recording any reason on 25th July, 2005, it was recorded that before costing details can be finalised, the file should be examined by the concerned zone. The next noting in the file is dated 1st August, 2005 wherein again it was accepted that original cost could be charged with interest @ 12% per annum. This aspect had already been decided earlier in April, 2005 when it was decided that the appellant was covered by wrong address policy. Moreover, in the present case current cost of the flat before 30th September, 2005 was lower than the original cost plus interest. Therefore there should not have been any difficulty in issuing the allotment-cum-demand letter on the basis of the current cost which was lower.

17. The cost was computed on 25th August, 2005 on the basis of original cost of the flat of Rs.3,19,671/- and as on the said date, the old cost was found to be Rs.6,40,500/-. On this amount, interest was first calculated for a period of 74 months i.e. up to 30th September, 2005 and total demand of Rs.11,14,470/- was computed. There is over-writing and this figure has been changed to Rs.11,20,880/- by increasing the number of months for which interest was payable to 75 months from 74 months. Thus interest was charged upto the end of October, 2005. After the calculation of the cost which had taken almost two months from the date of draw of lots, the file started moving at a snail's pace. There are about 42 signatures and stamps at pages 11 and 12 of the file which shows the file being pushed from one table to the other. There are virtually no notings on these two pages. The file shows a definite attempt to delay the issue of demand-cum-allotment letter.

18. It is admitted case of both the appellant and the respondent that in case the demand-cum-allotment letter had been issued

in September, 2005 as per wrong address policy of the Delhi Development Authority, the appellant would have been liable to pay the current cost of the flat on the date of the issuance of the allotment letter i.e. Rs.8,43,920/- or the original cost of the flat plus interest i.e. Rs.11,14,470/-, whichever was lower. However, as the allotment letter was issued after 1st October, 2005 and there was change in the cost of the flat and as per the working by the Delhi Development Authority, the appellant was liable to pay either Rs.12,39,730/- or Rs.11,20,880/-, which ever was lower.

19. During the course of the arguments, we had asked the counsel for the Delhi Development Authority on what date every year costs of the flats was being regularly increased/revised by the Delhi Development Authority and whether as a matter of policy, cost was being increased on 1st October every year. At the time of hearing, the counsel for the respondent-Delhi Development Authority had stated that normally costs of flats were increased on 1st April of every year being the start of the

financial year. It was further stated that in the year 2005 costs of flats were increased on two occasions i.e. 1st April, 2005 and 1st October, 2005. It was, therefore, submitted that the increase in the price of flats as on 1st October, 2005 was unusual and not normal. However, counsel for the respondent on the following day informed us in the open Court that the Delhi Development Authority had been increasing cost of flats every year on 1st October and this was the position even prior to 2005.Thus the respondent was aware that the cost of the flat was likely to go up on 1st October, 2005.

20. It is apparent from the calculations made on 25th August,2005 that it was decided that the demand cum allotment should be issued after 1st October, 2005. As already stated above, first calculation of interest upto 30th Sept.,2005 had been done but subsequently this was struck off and calculation of interest upto 30th October, 2005 was done. It was perhaps decided that letter of allotment shall not be issued before 1st October, 2005 so that the appellant does not get benefit of lower price. This also

explains the slow movement of the file thereafter.

21. The file, after calculations were done, simply moved from one table to the other and sometimes remained lying for days at one table. This can be seen from the fact that after 25th August, 2005, the next signature is dated 31st August, 2005 and thereafter it was examined with next signature on 12th September, 2005. From 12th September, 2005 till 16th September, 2005 file passed through several hands who simply signed the file without any observation. On page 11 of the file, there are as many as 21 different signatures and stamps for the period between 25th August, 2005 to 15th September, 2005 with virtually no notings. Similarly, noting dated 14th September, 2005 is self explanatory and reads as under:-

> "Cost of Rs.11,20,880/- calculated on the pre-page may please be approved."

22. Cost of Rs.11,20,880/- included interest upto 31st October, 2005. It is, therefore, clear from the above noting sheet dated 14th September, 2005 that it had been decided that demand-

cum-allotment letter would be issued to the appellant in October, 2005 and not in September, 2005. It may be noted here that as per the computation made on 25th August, 2005 the total costs with interest upto 30th September, 2005 was Rs.11,14,470/- only. Subsequently, this figure is scored off and interest upto October, 2005 was calculated and accordingly the cost was increased to Rs.11,20,880/-. On 16th September, 2005 it is recorded that cost has been approved and may be sent for necessary action. Thereafter there are as many as seven signatures with direction to prepare the demand letter. Demand letter was directed to be issued on 28th September, 2005 with the following observations:

> 11."In this case costing has been approved by the competent authority on pre-page. Now ADC (Systems) may please prepare the demand letter."

23. It again took more than a month just to issue the demand letter which was posted on 3rd November, 2005.

24. We feel equity and justice demands in the present case that

the appellant should be asked to pay the lower figure i.e., the cost payable had demand-cum-allotment letter been issued on or before 30th September, 2005 and should not be made to suffer because of red tapism and file pushing in the office of Delhi Development Authority. In fact, the file notings which have been quoted above clearly show a concerted effort to prolong and delay issue of letter of allotment beyond September, 2005. Noting dated 14th September, 2005 has also been quoted. There are huge gaps and delays in between, when the file remained pending on one table or the other for days. Similarly, it also shows lack of concern on the part of the officers of the Delhi Development Authority to process and issue letter of allotment expeditiously so that burden is not put on the appellant who had been waiting since 1979 to have his own home. It has not been stated by the Delhi Development Authority that other persons successful in the draw of lots on 29th June,2005 had not been issued letter of allotment before the price increase on 1st October, 2005. We feel in the present case the demand-cum-allotment letter had not been issued within the reasonable time and the appellant should not

be made to suffer on the ground of inefficiency and negligence on the part of the officers of the Delhi Development Authority,for their failure to process the case when they knew that in case the demand letter was not processed on or before 30th September, 2005, the appellant would be liable to pay increased and higher cost. It is the case in which the appellant has been denied fair and just treatment. Callousness, lethargic attitude unmindful of adverse effect on citizens on the part of the respondent cannot be accepted. File pushing and red tapism cannot be given legal acceptance with costs being paid by innocent allottees, who then are driven to look for and adopt different ways and means for prompt issue of letter of demand-cum-allotment letter.

25. In view of the above, we allow the present appeal and set aside the order of the learned Single Judge. The writ petition is also accordingly allowed. It is directed that the appellant is entitled to allotment on the basis of price prevailing in September, 2005 or the original cost plus interest in terms of the Delhi Development Authority policy, whichever is less. If the appellant has already paid

excess amount, the same shall be refunded back by Delhi Development Authority within a period of four weeks. In case of any delay beyond four weeks, Delhi Development Authority will be liable to pay interest @ 8% per annum after four weeks till refund. The appellant will also be entitled to costs, which are assessed at Rs.5,000/-.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

APRIL 17, 2007.
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